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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,400	01/24/2002	Curtis H. Porter	OPD002CP-1	1607

7590 03/17/2004

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EXAMINER
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NGUYEN, XUAN LAN T

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/057,400

Applicant(s)

PORTER ET AL.

Examiner

Lan Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 11-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

1. Applicant's argument about the drawing objection has been considered but found to be non-persuasive. On page 8, lines 4 and 5 of the specification, it states that switches 30 extend into slot(s) 31. Figure 3 shows only one limit switch 30 extending into slot 31. Figure 3 is incorrectly illustrating the invention. The objection is repeated herein. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

2. The disclosure is objected to because there is disclosed and illustrated only one slot 31 where the limit switches 30 extend into. However, on page 8, lines 4 and 5, it is mentioned "slots 31". Applicant is urged to review the specification to correct this deficiency. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- Claim 9 recites "at least one slot defined in the first plate." Figures 3 and 4 illustrate only one slot 31 in the second plate 1, the sliding plate, wherein the two limit switches extending into. In the previous Office Action, the Examiner had expressed that this claimed feature should be --slot defined in the second plate--. However, it appears that the Applicant does not agree that the slot 31 is defined in the sliding plate. The Examiner is at a lost of which slot is being claimed.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 2, 16 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bortolon (USP 6,364,047).

Re: claim 2, Bortolon shows a pedal assembly, as in the present invention, comprising a first plate 20, a second plate 18 located above the first plate and is

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movable relative to the first plate wherein the second plate receives a foot operated brake pedal 12, and a movement mechanism 23, 21, 28 for adjusting the position of the second plate relative to the first plate.

Re: claims 16 and 19, Bortolon shows an adjustable pedal assembly, as in the present invention, comprising: a stationary plate 20, a sliding mounting plate 18 located above the stationary plate and is movable relative to the stationary plate wherein the sliding plate receives a foot operated brake pedal 12, and a movement mechanism 23, 21, 28 for adjusting the position of the sliding plate relative to the stationary plate. As shown in figure 2, stationary plate 20 defines at least one slot wherein the pin 22 located on the sliding plate is received.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 4, 6, 8 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bortolon (USP 6,364,047).

Re: claim 1, Bortolon shows an adjustable pedal assembly, as in the present invention, comprising a stationary plate 20, a sliding mounting plate 18 that is movable relative to the stationary plate wherein the sliding mounting plate receives at least one pedal 12, and a drive mechanism 23, 21, 28 for displacing the sliding mounting plate

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relative to the stationary mounting plate. Bortolon discloses the claimed invention except for the drive mechanism being located above the sliding mounting plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have located the drive mechanism above the sliding mounting plate, since it has been held that rearranging parts of an invention involves only routine skill in the art.

*In re Japikse*, 86 USPQ 70.

Re: claims 4 and 11, figure 3 shows the screw drive 21 and motor 23.

Re: claims 12-14, figure 3 shows a shield (box) next to number 28, said shield is stationary relative to the sliding plate and is displaced with said plate.

Re: claim 3, Bortolon shows an pedal assembly, as in the present invention, comprising a first plate 20 mounted horizontally relative to floor 40, a second plate 18 that is movable relative to the first plate wherein the second plate receives a brake pedal 12 and a foot operated throttle control pedal 14, and means 23, 21, 28 for displacing the second plate relative to the first plate. Bortolon discloses the claimed invention except for the drive mechanism being located above the sliding mounting plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have located the drive mechanism above the sliding mounting plate, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Re: claim 6, figure 2 and column 2, lines 3-12, show the foot operated throttle control pedal 14, 15 to be electronic foot operated throttle control pedal.

Re: claim 8, figure 3 shows drive screw 21 and motor 23.

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9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bortolon (USP 6,364,047) in view of Asano et al. (USP 5,086,663).

Bortolon's pedal assembly, as rejected in claim 2 above, lacks an electronic control mechanism wherein the limits of adjustment are controlled by at least two limit switches. Asano teach the concept of limiting the adjustment of a foot pedal by an electronic control mechanism using at least two limit switches in column 4, lines 60-65. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Bortolon's pedal assembly with an adjustment limiting capability as taught by Asano using at least two limit switches to ensure that the pedal assembly is properly operated within the desirable adjustment range.

10. Claims 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liston (USP 4,499,963).

Liston shows an adjustable pedal assembly, as in the present invention, comprising: a stationary plate 30, a sliding mounting plate 28 movable relative to the stationary plate wherein the sliding plate receives a foot operated brake pedal 26, and a movement mechanism 40, 50, 56 for adjusting the position of the sliding plate relative to the stationary plate. As shown in figures 2-4, stationary plate 30 defines at least one slot 86 wherein the pin 26 located on the sliding plate is received. Liston's adjustable pedal assembly lacks the sliding plate located above the stationary plate and the drive mechanism being located above the sliding mounting plate. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have located the sliding plate above the stationary plate the drive mechanism above the sliding mounting

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plate, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liston (USP 4,499,963) in view of Asano et al. (USP 5,086,663).

Liston further shows the slots 38 defined in the sliding mounting plate 28 where pin 32 located on the stationary plate is received in order to limit the movement of the sliding plate 28. Liston lacks the switch that is associated with the drive mechanism. Asano teach the concept of limiting the adjustment of a foot pedal by an electronic control mechanism using switches in column 4, lines 60-65. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Liston's pedal assembly with an automatic adjustment capability by using a switch that is associated with the drive mechanism as taught by Asano in order to automatically adjusting the position of the pedal assembly.

### ***Response to Arguments***

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

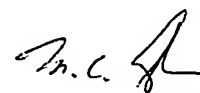
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lan Nguyen whose telephone number is 703-308-8347. The examiner can normally be reached on M-F, 8 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
XLN

  
3/11/2008  
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